

EXHIBIT 6

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA . . . Case No. 3:19-cr-00029-AET-1
.
v. . . 402 East State Street
.
Trenton, NJ 08608
.
GEORGE GILMORE, .
.
Defendant. .
.
January 18, 2019
.
11:01 a.m.
.

TRANSCRIPT OF INITIAL APPEARANCE AND ARRAIGNMENT
BEFORE HONORABLE ANNE E. THOMPSON
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

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1 COURTROOM DEPUTY: Remain seated.

2 THE COURT: All right. Who have we got here? On
3 behalf of the United States?

4 MS. SUH: Good morning, Your Honor. Assistant U.S.
5 Attorney Jihee Suh on behalf of the Government.

6 MR. SKAHILL: Good morning, Your Honor. Assistant
7 U.S. Attorney Matthew Skahill for the United States.

8 THE COURT: Very well. And across the aisle?

9 MR. MARINO: Good morning, Your Honor. Kevin Marino,
10 Marino, Tortorella & Boyle for the defendant, George Gilmore.

11 THE COURT: Very well. And you have the defendant
12 with you?

13 MR. MARINO: Yes, I do, Your Honor.

14 THE COURT: All right. What do we have? We have an
15 indictment, do we?

16 MS. SUH: Yes, Your Honor.

17 THE COURT: All right. What does it charge and whom
18 does it charge?

19 MS. SUH: The indictment charges defendant George
20 Gilmore with six counts. Count 1 charges the defendant with
21 the evasion of payment of taxes in violation of Title 26,
22 United States Code Section 7201 and Title 18, United States
23 Code Section 2.

24 Counts 2 and 3 charges the defendant with filing
25 false tax returns in violation of Title 26, United States Code

1 Section 7206, Subsection 1, and Title 18, United States Code
2 Subsection 2.

3 Counts 4 and 5 charge the defendant with failure to
4 collect, account for and pay over payroll taxes in violation of
5 Title 26, United States Code Section 7202 and Title 18, United
6 States Code Section 2.

7 And Count 6 charges the defendant with making false
8 statements in a loan application, in violation of Title 18,
9 United States Code Sections 10, 14, and 2.

10 Your Honor, if I may proceed in advising the maximum
11 penalties for the offenses?

12 THE COURT: Yes, you may.

13 MS. SUH: For each of Counts 1, 4, and 5, the
14 defendant faces a maximum term of imprisonment of five years, a
15 maximum fine of \$250,000 or the greater -- the greater of
16 \$250,000 or twice the pecuniary loss or gain from the offenses,
17 and a supervised release term of three years.

18 For Counts 2 and 3, the defendant faces a maximum
19 term of imprisonment of three years and a maximum fine of
20 \$250,000 or twice the gross pecuniary gain or loss from the
21 offenses, and a supervised release term of one year.

22 For Count 6, the defendant faces a maximum term of
23 imprisonment of 30 years and a maximum fine of \$1 million.

24 The information that the Government has establishes
25 that Mr. Gilmore is a U.S. citizen. However, if he were not a

1 U.S. citizen, he's advised that conviction on any of the
2 charged offenses would subject him to immigration proceedings
3 and removal from the United States, and that he has the right
4 to confer with the consulate of the country of which he is a
5 citizen.

6 THE COURT: All right. Thank you very much. Now Mr.
7 Marino.

8 MR. MARINO: Yes, Your Honor?

9 THE COURT: You've received a copy of the indictment
10 for your client, correct?

11 MR. MARINO: I have, Your Honor.

12 THE COURT: And you waive the reading of this
13 indictment, is that correct?

14 MR. MARINO: That is correct, Your Honor.

15 THE COURT: And you would wish that I would enter
16 pleas of?

17 MR. MARINO: Not guilty on all charges, Your Honor.

18 THE COURT: Very well. Not guilty pleas will be
19 entered with regard to all counts in the indictment.

20 Now the next matter would be a scheduling order.

21 MR. MARINO: If I may address that, Your Honor?

22 THE COURT: All right.

23 MR. MARINO: I have --

24 THE COURT: Now we usually sign the scheduling order
25 at the time of an arraignment. Now --

1 MR. MARINO: Understood, Your Honor.

2 THE COURT: And I understand that the two of you have
3 talked and have not agreed on the schedule.

4 MS. SUH: Yes, Your Honor.

5 MR. MARINO: That is correct, Your Honor. I have
6 advised the Government that Mr. Gilmore intends to enforce his
7 rights under the Speedy Trial Act and wishes to be brought to
8 trial by no later than March 29th, 2019 which is 70 days from
9 today.

10 THE COURT: All right.

11 MS. SUH: Your Honor, the Government is certainly
12 willing to oblige and conform with the Speedy Trial Act and get
13 to trial in this case as quickly as possible.

14 However, Your Honor, we think that it would be
15 premature and run the risk of setting an artificial trial date
16 if we were to do so today. So what the Government would
17 propose that we do today is set a schedule for the exchange of
18 discovery and a status conference in short order, perhaps mid-
19 February, and at that time, take up the issue of when the trial
20 should be set.

21 There are a number of considerations, Your Honor,
22 that would weigh in favor of following those procedures rather
23 than setting a trial date now. First, Your Honor, the
24 discovery in this case is extensive. Because it is voluminous,
25 we actually proposed designating this case as a complex case,

1 but we were ready to prepare all -- prepare and produce all the
2 discovery all at once rather than at stages. And we propose
3 date of March 1st at first to the defense, but he opposed. And
4 in light of what the defense has just explained, we're ready to
5 accelerate that and produce it perhaps on February 8th is what
6 we would propose and for the defendant's discovery to be
7 produced a week later with Rule 12 notices.

8 Your Honor, the nature of the discovery, the large
9 chunk of that discovery consists of subpoenaed records. The
10 electronic size of those subpoenaed records alone is
11 approximately 36 gigabytes. I'm advised by my IT department
12 that that's at least 12,000 electronic files. The defendant's
13 going to need some time to review that.

14 In addition, there will certainly be pretrial motions
15 in this case and in limine motions. At a minimum, the
16 Government will file a Rule 404(b) motion prior to trial. And
17 shortly, we plan to make an application on the issue of Mr.
18 Marino's simultaneous representation of the defendant and
19 employees of the defendant's law firm.

20 Now that the defendant has been indicted and we're
21 proceeding to trial with employees of the law firm that will be
22 called as witnesses by the Government to testify at trial, we
23 believe there's a conflict of interest that needs to be
24 addressed by the Court and the issue of whether that conflict
25 of interest is in fact waivable, as Mr. Marino asserted prior

1 to indictment, we believe that issue needs to be addressed and
2 resolved by the Court prior to trial.

3 Your Honor, in addition, the defendant has raised a
4 hoarding disorder as a possible defense. Now to the extent
5 that the defendant does proceed with seeking to raise that as a
6 mental condition under Rule 12 that would be relevant to trial,
7 we believe that there would be some motion practice related to
8 that because the Government obviously would consider making a
9 motion to have its own examination of the defendant by its
10 mental health expert.

11 So given these considerations, Your Honor, we believe
12 that today we should set the schedule for discovery and a
13 status conference in short order and then take up the trial
14 date later. We don't want to set a trial date now and inform
15 civilian witnesses that that's the trial date only for it to be
16 moved later and to do so before we've even exchanged discovery.

17 THE COURT: Your response, Mr. Marino?

18 MR. MARINO: Mr. Gilmore has been under investigation
19 by the United States Attorney since August -- at least August
20 of 2016 which is when we became aware of that investigation and
21 when I was retained and began to represent Mr. Gilmore.

22 I much appreciate the Government's thought that I may
23 need more time to prepare for a case that has been under
24 investigation for that length of time, but I do not need it or
25 want it.

1 Here's what I do want. George Gilmore is the
2 republican chairman of Ocean County. He represents nearly
3 every municipality in Ocean County. Since his indictment was
4 announced, his clients and his colleagues in the Republican
5 party have made it clear that they intend to stand behind him.
6 This is a cloud that's been over his head for literally years,
7 during which time, they have served subpoenas on every single
8 client that the Gilmore & Monahan firm has.

9 They have looked high and low for evidence of
10 political corruption. They have asked Mr. Gilmore, they've
11 appeared at his home in August of 2016 where Mr. Mahoney of the
12 United States Attorney's Office accompanied by a revenue agent
13 of the Internal Revenue Service attempted to cua (phonetic) Mr.
14 Gilmore into cooperating in some sort of political corruption
15 investigation. Specifically telling him that there are -- must
16 be folks in Trenton that you know things about and you can help
17 yourself and so forth, and so on.

18 We have had a forensic account review every single
19 book and record in this case. We have met with the Government
20 representatives on any number of occasions. I have spoken with
21 representatives of the Department of Justice enforcing our
22 right to be heard before this indictment was handed up.

23 We have absolutely no desire for any extension
24 whatsoever. Motions in limine, meaning motions at the
25 threshold are considered in every case. They don't have

1 anything to do with upsetting the Speedy Trial schedule.

2 Earlier this week, I received an e-mail from Mr.
3 Skahill and Ms. Suh in which they identified this provision of
4 18 U.S.C. Section 31(c) (sic). And Your Honor will be well
5 familiar with it. Section (h)(8). And they say, first of all,
6 under (h)(7) that they believe this is a case which should be
7 continued. And the factor they identify is Number -- (B)(ii),
8 whether the case is so unusual or so complex due to the number
9 of defendants, the nature of the prosecution, or the existence
10 of novel questions of fact or law that it is unreasonable to
11 expect adequate preparation for pretrial proceedings or for the
12 trial itself within the time limits established by this
13 section.

14 The number of defendants in this case is one. The
15 nature of the prosecution is a straightforward tax case, not --
16 on most of the counts, not for evasion per se but for a willful
17 failure to pay those taxes Mr. Gilmore indicated in his filings
18 that he in fact owes.

19 It is -- and there's a bank fraud count which is not
20 complex or unusual in any way either.

21 The notion that there are novel questions in fact or
22 law? No, there are not. And that it is unreasonable to expect
23 preparation? No, it is not. We've been preparing for this
24 case since August of 2016. They could have brought it at any
25 time they wished. They didn't have to bring it last week.

1 They could have brought it next month. They could have brought
2 it next year. They chose to go now. They have these
3 documents.

4 Ms. Suh says, without apparent irony, that there are
5 documents from financial institutions and so forth. They have
6 those documents. Surely, she's not suggesting that they would
7 employ the grand jury to gather evidence for use at that trial.
8 We know that's improper and that's not something they ever
9 engage in. I've been doing business with their office for
10 three decades.

11 So what we're talking about is, is Mr. Gilmore going
12 to be ready to go? Yes, he is.

13 The hoarding disorder that we have raised, I have
14 made my expert report available to them. I have told them that
15 they could interview my expert if they wish to do so. They
16 told me that they read the report and they were unimpressed.
17 They believe that it does not negative (sic) any element of the
18 offense. I quite disagree with them.

19 But if they want to have their witness examine Mr.
20 Gilmore, they should have their witness examine Mr. Gilmore.
21 I'll make him available.

22 I don't intend to move to dismiss any part of their
23 misbegotten indictment because I intend to either get a
24 judgment of acquittal at the conclusion of their case or to get
25 an acquittal outright at the conclusion of the trial.

1 They have all the cards until today. Today, the
2 first appearance, I get to say, put up in 70 days or the case
3 gets dismissed. If they're not ready to go in 70 days, they
4 should dismiss the case. If they are ready to go in 70 days,
5 we should go in 70 days. I'm entitled to that. So no, I don't
6 want to wait.

7 First of all, the suggestion is three more weeks to
8 get discovery they obviously have in their possession. What
9 are we waiting for?

10 I don't want to wait to let them decide whether they
11 want to make the typical motions such as a 404(b) motion. It's
12 a motion in limine, made at the threshold of every trial. It
13 has never affected the timing of any trial I have ever been
14 involved in in my entire career.

15 So I want to go forward. Mr. Gilmore wants to go
16 forward. He should not be made to suffer the pain of this
17 investigation for one day longer than the United States
18 Congress says a person accused by a grand jury ought to be made
19 to suffer. And that's why we want to go forward.

20 So all that business about heavy duty discovery and
21 all these gigabytes and motions in limine, all meaningless.

22 Now, yes, I have written waivers from each one of the
23 people they hailed before the grand jury over the course of the
24 last two years. Some of them went -- surely, some of them went
25 in 2017, many of them. And some in 2018. I don't perceive any

1 difficulty or problem with that whatsoever. They have written
2 waivers. If they want to raise that on a motion in limine,
3 they can raise it on a motion in limine.

4 In terms of substantive motions that would -- that
5 this Court would have to have under consideration for some
6 protracted period of time, there will be none. I will make
7 none. Their indictment states a claim on which relief can be
8 granted. Their indictment states a crime. Whether they can
9 prove that crime is a whole other thing. And I'm ready to go
10 with them. In fact, I will tell Your Honor, I can be ready to
11 proceed the first week in February.

12 So if they want to wait, they pulled the trigger, now
13 it's time to put up. Thank you, Your Honor.

14 THE COURT: Ms. Suh, yes?

15 MS. SUH: Your Honor, I don't believe that there's
16 much disagreement actually. I appreciate Mr. Marino's zealous
17 advocacy for his client, but the Government's position is that
18 we'll be ready to proceed. We're not asking for an extension.
19 All that we're proposing is, let's take this step by step, set
20 the schedule for discovery, have a status conference, and at
21 that time, select a trial date. That's all we're proposing.
22 We're not asking for an extension.

23 And obviously, we dispute Mr. Marino's position with
24 respect to the conflict issue. And that's why we believe that
25 we'll need to address that with the Court. We'll file a motion

1 on that. I'm sure he'll respond.

2 But the scheduling order should allow some time for
3 that. And we could do that very shortly, this month. But what
4 we're mainly proposing is that let's set the discovery
5 schedule, set a short status conference in short order, and
6 then take up a trial date instead of setting an artificial one
7 now.

8 We have no opposition to trying this case within 70
9 days. There's -- however, there's a sensible sequence in
10 getting there. And that, first for the defendant to review the
11 discovery, to receive it, and then to talk about pretrial
12 motions and set a schedule for them.

13 THE COURT: Well, here's the problem. He's asking
14 for what the statute provides, and that's a trial within 70
15 days. And if that's what he wants, what's that March the --

16 MR. MARINO: March 29th would be the 70th by my
17 count, Your Honor.

18 THE COURT: Well, that would be a Friday.

19 MS. SUH: Friday, Your Honor.

20 THE COURT: And we could certainly begin jury
21 selection and start the trial on the 29th.

22 MR. MARINO: That would be my pleasure, Your Honor.
23 And I believe the Court is right about that.

24 THE COURT: And I have no problem setting that date.

25 MR. MARINO: Yes.

1 THE COURT: But here's the problem. Be seated both
2 of you.

3 MR. MARINO: Thank you, Your Honor.

4 THE COURT: The problem is that on the one hand, Mr.
5 Marino is asking for that date. The Speedy Trial Act was
6 enacted to protect the defendant's rights. The processes which
7 the Government has listed are really provisions to assist the
8 defendant. The opportunity -- have a seat. The opportunity to
9 have full discovery, an opportunity to consider pretrial
10 motions, some of them may become more evident as time,
11 preparation elapses. All of that is really for the benefit.
12 It's not for the benefit of the Government.

13 The Government obviously has gotten the indictment.
14 So they've already got the materials. It's the defendant who
15 doesn't have everything. So it's a way of -- in a way, it's
16 handicapping the defendant, not the Government at all.

17 But if the Government -- if the defendant is seeking
18 a date of the 29th of March, I'm quite satisfied the Court
19 would be ready to try the case. It doesn't matter to the Court
20 as long as we're not in trial with something else. And I don't
21 anticipate being in trial with something else on the 29th of
22 March. So that's fine with me.

23 MR. MARINO: If I may be heard just --

24 THE COURT: But it's the -- have a seat. But it's
25 the protections for the defendant that are the concern here,

1 the recusals and the conflict matter that seems to me -- this
2 is January 18th, it seems to me that the Government can be
3 ready with that in two weeks, I would think, to address that.
4 And all those other considerations, really, are for the benefit
5 of the defendant, not for the benefit of the Government.

6 So I agree with Ms. Suh that it seems to be a date
7 that is not realistic. Just looking at the substance of the
8 indictment, it would seem that it would certainly take longer
9 to prepare. But the Court is quite satisfied to go on March
10 29th if the parties are ready or if the defendant is ready.
11 I'm sure the Government could be ready. They've admitted that
12 they could go on the 29th.

13 So let's short circuit this. We'll set the date for
14 the 29th of March which the defendant has requested.

15 MR. MARINO: May I be heard, Your Honor? I actually
16 did not request the 29th. I requested that that be the very
17 last date. So I'm prepared to go before the 29th. I just want
18 that to be clear for the record. And you know --

19 THE COURT: Well, we have to have a date, Mr. Marino.

20 MR. MARINO: Yes, I think we have to have a date.

21 And --

22 THE COURT: Now would you like to give me another
23 date that you would like to -- as your trial date?

24 MR. MARINO: Your Honor, here's -- it's this simple
25 from my perspective. I don't have a problem with the 29th if

1 that's the date that the Court wishes to set. I just wanted to
2 point out that I really do want Mr. Gilmore to be tried within
3 the 70 days.

4 THE COURT: Promptly. You want him to be tried
5 promptly.

6 MR. MARINO: I do. And I'll tell you this --

7 THE COURT: I understand. I sensed that.

8 MR. MARINO: Yes. And I'll tell you this as well,
9 this issue about the waivers of these other individuals, yes, I
10 represented those individuals pursuant to written waivers. I
11 also produced each and every one of them to be submitted to the
12 grand jury. So they've testified in the grand jury. I'm more
13 than confident that whatever lingering issue they may have
14 about putting some of these witnesses on the stand can be
15 resolved.

16 I'll tell you, I think there also will be many things
17 that can be stipulated to. I'm not sure they quite understand
18 how we intend to proceed here. But my guess is as often
19 happens in these cases when you have responsible folks on both
20 sides, they sit down and they say, well -- for example I'm
21 going to want to introduce all of these records. Is there a
22 need to bring someone into authenticate them? In my
23 experience, typically no. If there's something to talk about,
24 we'll talk about it.

25 But other than that, I don't intend, in other words,

1 to put any unreasonable impediment, any impediment at all in
2 their way. If there is documentation from these financial
3 institutions, I don't see any reasons to have a custodian for
4 example come on and authenticate the document. Your Honor has
5 been through this drill many times and I a number of times as
6 well.

7 So the idea that -- I understand and appreciate the
8 Court's indulgence. And of course it's for the defendant's
9 protection. Of course. But my thought is if Your Honor sets a
10 date -- and it can be whichever date within now -- between now
11 and the 29th of March that is workable for the Court. And
12 there comes -- becomes some -- it if becomes clear during the
13 course of that time that there needs to be more time, I assume
14 that they will ask for that. I don't envision asking for it
15 myself, but --

16 THE COURT: Well, you can't --

17 MR. MARINO: You cannot foresee everything that might
18 happen. But I do believe that if you set it for that day and
19 with a resolve to actually go forward on that day, we'll do
20 everything in our power to make certain that that happens.

21 I wouldn't want to be in a situation where Your
22 Honor's on trial with another matter and then it gets kicked
23 for a period of time. And I understand the Court is very busy
24 obviously. And we have this looming business of a government
25 shutdown. I know that the U.S. Courts, at least according to

1 its website have made clear that criminal cases will be
2 respected and will go forward and so forth. But you know
3 that's obviously another thing that's sort of looming in the
4 background.

5 So I just -- if Your Honor wants to set it for the
6 29th, that's fine. If you want to set it for a date prior to
7 the 29th, that's fine too. I expect that we will be ready to
8 go in very short order. And I want to keep the pressure to
9 produce all these things in a timely fashion and to move
10 forward on it.

11 THE COURT: I think if we say the 29th, Mr. Marino,
12 that will keep the pressure on everybody.

13 MR. MARINO: That's fine with me, Your Honor.

14 THE COURT: It takes a long time to get these cases
15 ready. And you know that better than I.. So --

16 MR. MARINO: Your Honor, I will tell you that I tried
17 a case in October of 2014 in the United States District Court
18 for the Eastern District of Virginia. And I will tell you that
19 when I arrived at the arraignment and said the very same things
20 I'm saying to Your Honor in that case, which I will tell you
21 was far more complex than a simple tax case such as this, the
22 Government said, all these things. It sounds very magnanimous,
23 we want to make sure the defendant is ready to go and so forth.
24 And Judge Liam O'Grady said, you indicted the case, you've got
25 to be ready to go in 70 days.

1 And I will tell you, I met my client for the first
2 time on July 14th. And he was on a plane home, acquitted by
3 order of the Court on October 23rd because we tried that case
4 in accordance with the Speedy Trial Act.

5 They don't like it because in the normal course, they
6 take forever to get the case ready to go. Then they indict it.
7 And then they take forever to get the trial ready to go. But
8 that's not what the United States Congress says the defendant
9 is entitled to. That's what I'm reacting to.

10 So I know it takes a long time. And I know that the
11 Speedy Trial Act in a sense is honored in the breach because
12 everyone sort of thinks, well, I have of other cases and
13 there's a lot going on and, hey, we all really need time.
14 Well, when your reputation hangs in the balance, you don't want
15 time.

16 THE COURT: I understand. I understand. And it's a
17 serious matter. And I'll make sure that the Court is ready to
18 receive you on the 29th of March. So we'll set that as the
19 trial date.

20 MR. MARINO: Thank you very much, Your Honor.

21 MS. SUH: And that's fine with the Government, Your
22 Honor.

23 THE COURT: All right. Now in dividing up the time
24 between January 18th and March 29th, shall we set dates which
25 would be realistic for discovery -- for motions if there are to

1 be any and so on?

2 MR. MARINO: That would be the defendant's pleasure,
3 Your Honor.

4 THE COURT: All right. Let's see if we can do that
5 right now. Can you make a proposal? You've got your list of
6 things that are anticipated. Maybe I'll give you five minutes
7 so I don't have to be here for that. You can take five minutes
8 and see if you can work out a realistic schedule between now
9 and March 29th. And I'll be back in five minutes and we'll
10 order them.

11 MS. SUH: Thank you, Your Honor.

12 MR. MARINO: Thank you, Your Honor.

13 COURTROOM DEPUTY: All rise.

14 (Off the record)

15 COURTROOM DEPUTY: Remain seated.

16 THE COURT: All right. What do we have? Any
17 agreement as to chopping up the time period between now and
18 March 29th?

19 MR. MARINO: We have spoken, Your Honor. And we
20 haven't reached --

21 MR. SKAHILL: Your Honor, if I could -- if I --

22 THE COURT: Everybody's talking at the same time.
23 All right. I should decide who I'm going to listen to.

24 MR. SKAHILL: Your Honor, if I could be heard?

25 THE COURT: All right. Let me hear from the

1 Government, then I'll hear from you, Mr. Marino.

2 MR. SKAHILL: So Judge, we do not have an agreement.

3 And what we proposed and what we think is eminently reasonable

4 in this case is to provide discovery by February 8th. And so

5 we can be clear on this. And Mr. Marino referenced a

6 continuance order and a scheduling order that we sent over.

7 Judge, the --

8 THE COURT: Wait a minute. Wait a minute. Let me

9 see if I understand what's going on.

10 MR. SKAHILL: Yes.

11 THE COURT: You providing discovery on your part --

12 MR. SKAHILL: Yes, Your Honor.

13 THE COURT: -- entails what?

14 MR. SKAHILL: So what we intend to do, Your Honor,

15 there is --

16 THE COURT: I mean it's not a matter of just opening

17 a door to a room and letting them come in?

18 MR. SKAHILL: It is not, Judge. There is a

19 tremendous amount of discovery in this case.

20 THE COURT: Okay.

21 MR. SKAHILL: And as Ms. Suh put on the record,

22 approximately 36 gigabytes. We're going to provide the

23 discovery electronically. It includes hundreds of responses

24 from subpoenas.

25 THE COURT: So what does that require you to do?

1 That's what I want to know.

2 MR. SKAHILL: Three weeks of time, Your Honor, to
3 Bate stamp stuff, organize it, catalogue it and put it on a
4 hard drive to send over. We think that's reasonable, Judge.

5 And to be clear, when we had initially talked about
6 designating this case as complex, we never forced it on Mr.
7 Marino. We sent him a proposed continuance order for
8 consideration due to the volume of material in this case.

9 He doesn't think it's complex. That's fine. But we
10 have a considerable amount of stuff to turn over, Judge. And I
11 understand his -- he has stood up and said, this case has been
12 going on for years --

13 THE COURT: Well, you see, maybe he doesn't want all
14 that. I mean he's entitled, if he wants, to go to trial with
15 less than what you -- with less than a perusal of what you have
16 if that's his choice.

17 MR. SKAHILL: Understood, Judge. But we want to make
18 sure we're complying with the Rule 16. If he doesn't want the
19 discovery, we won't give him the discovery, but we want to
20 comply with the rule and provide it. To comply with that rule
21 and ensure it's turned over in a fulsome way, we think for a
22 case with these counts, with this nature, that three weeks is
23 reasonable.

24 MR. MARINO: If I may be heard very briefly, Your
25 Honor?

1 THE COURT: Just not yet. Not yet. I have to
2 understand what counsel for the Government is saying. You have
3 to Bate stamp and organize evidence now?

4 MR. SKAHILL: Judge, I should --

5 MR. MARINO: Thank you.

6 MR. SKAHILL: Judge, evidence is organized, but we
7 want to make sure it's provided in a way that's usable for Mr.
8 Marino. We don't want to just take files and stick them on a
9 disk and just turn them over. If he wants it that way, we
10 could do it faster. But we want to make sure that it's in a
11 format that's usable to him. We want to make sure -- we want
12 to do a check of things to make sure that you know proper
13 redactions are done. We can provide this in a quick
14 turnaround, but for the amount of stuff here, we don't think
15 three weeks is an unreasonable amount of time.

16 THE COURT: You mean three weeks before you would
17 invite him, is that what you're saying?

18 MR. SKAHILL: We could invite him in earlier, Judge,
19 but we want to provide the stuff on a disk to him so he can
20 just have it.

21 MR. MARINO: I don't understand what's going on. I
22 just want to be heard.

23 THE COURT: Mr. Marino, now let's go step by step.
24 Let the Judge try to understand first, then you can understand.

25 MR. MARINO: Fair enough, Your Honor.

1 THE COURT: So you're saying that you won't be ready
2 to turn over discovery 'til when? Now this is January 18th.

3 MR. SKAHILL: Judge, we propose February 8th. The
4 Court asked -- we can move faster than that, Judge. We thought
5 that was a reasonable date. We could do it --

6 THE COURT: All right. Well, he wants a fast track.

7 MR. SKAHILL: Yes, he does.

8 THE COURT: All right. So how soon can you provide
9 the open door for him with whatever it is that you would
10 consider he's entitled to have if he wishes to look at?

11 MR. SKAHILL: Judge, I think we could start rolling
12 stuff out to him next week, if we did things on a rolling
13 basis. I think we could --

14 THE COURT: So you could conclude by when?

15 MR. SKAHILL: I think we conclude everything by
16 February 8th, Judge, but we could probably -- if I could look
17 at my calendar, Your Honor? February 1st will be two weeks
18 from today. I think we could be concluded by February 1st.
19 That's 14 days, Your Honor.

20 THE COURT: All right. So you can make everything
21 available for him that he's required to -- that he's entitled
22 to by February 1st. That's two weeks from today.

23 MR. SKAHILL: I believe we could do that, Judge.

24 THE COURT: Now what other milestones do we have?

25 MR. SKAHILL: In terms of --

1 THE COURT: -- defense motions. But he's not
2 concerned.

3 MR. SKAHILL: No, Judge. What we had proposed, there
4 is a conflict issue.

5 THE COURT: Oh, there's some motions that you wanted
6 to make?

7 MR. SKAHILL: Yes, Judge. We raised a conflict
8 issue. We proposed to file that motion. Your Honor said in
9 two weeks we could do that. That would also be February 1st,
10 Judge.

11 THE COURT: All right. February 1st for the
12 Government's motions, conflict motions.

13 MR. SKAHILL: Yes, with a response by February 8th
14 and a reply by February 15th.

15 THE COURT: Fine.

16 MR. SKAHILL: And we had proposed any other pretrial
17 motions that Mr. Marino wishes to file by March 1st.

18 THE COURT: Well, we'll let him take a date for that
19 because we won't -- well, no. All right. We'll give March 1st
20 for Mr. Marino.

21 MR. SKAHILL: And Judge, I should also say there
22 would be obviously any reciprocal discovery that Mr. Marino
23 has, if we're providing by February 1st, we'd ask that he
24 provide by February 1st as well. As well as any Rule 12
25 notices that he may have.

1 THE COURT: Two weeks.

2 MR. SKAHILL: Two weeks from today.

3 MR. MARINO: Judge, whenever Your Honor is --
4 convenient for Your Honor --

5 THE COURT: Yes, when I get to you, yes. All right.
6 Fine.

7 MR. MARINO: I just want to make certain these dates
8 aren't being set in stone yet.

9 THE COURT: Right.

10 MR. MARINO: Thank you.

11 THE COURT: All right. Anything else that you would
12 need? This 404(b), what was that? You think you're going to
13 have 404(b) material that --

14 MR. SKAHILL: I think we will, Your Honor. We'd ask
15 them ten days before trial.

16 THE COURT: Well, you've allowed yourself plenty of
17 time for that. Okay. Ten days before trial. All right. What
18 else? What other milestones do we have?

19 MR. SKAHILL: We would also, Your Honor, need to set
20 a pretrial conference. I don't know if it's premature at this
21 point to pick a date for that. Obviously, if there's motions
22 filed, we will be back in front of Your Honor. But if we're
23 going to have that March 29th trial date, we will need a
24 pretrial conference before then to address trial related
25 issues, Judge.

1 THE COURT: Well, what about March 15th, two weeks
2 before trial starts?

3 MR. SKAHILL: Thank you, Your Honor.

4 THE COURT: Is there anything else that the
5 Government needs?

6 MR. SKAHILL: I don't believe so, Your Honor. I
7 think that addresses the issues.

8 THE COURT: All right. All right. Mr. Marino.

9 MR. MARINO: Thank you very much, Your Honor.

10 THE COURT: Now what would be workable for you, given
11 today to March 29th?

12 MR. MARINO: In the first place, I can't imagine why
13 20 percent of the time that the United States Congress says a
14 defendant has before he will be brought to trial at most, I
15 can't understand why 20 percent of the outside number would be
16 devoted to work that could have, and should have, and perhaps
17 was going forth?

18 THE COURT: Yes, and it's too late for that. And I
19 can't --

20 MR. MARINO: I want to come in and look at the room
21 full of documents today or Monday. I don't need them to put a
22 bow around it for me. I don't need them to do any of this.

23 THE COURT: Well, they want to Bate stamp it. They
24 want to put it on disks. So they want to make it so that you
25 can take it with you.

1 MR. MARINO: And that would be great, but --

2 THE COURT: And you don't have to sit in the room and
3 absorb it all at once.

4 MR. MARINO: The problem is --

5 THE COURT: Yes?

6 MR. MARINO: -- if they were going to make it
7 available to me electronically right now, that would make
8 sense. But they're going to eat 20 percent of my time.

9 THE COURT: That would be preferable.

10 MR. MARINO: I just want to go -- they can do that.
11 They can give it to me. I don't need it electronically until
12 February 8th or 1st or whatever it is. That's fine. But I'd
13 like to be there looking at their documents as soon as humanly
14 possible. I'd like to go there this afternoon and begin to
15 look at them for example.

16 I don't -- you know these are bank records. I can
17 tell you they're -- 36 gigabytes and so I can look at those
18 documents and satisfy myself without perusing them as to what
19 they are and what they could possibly contain that would
20 inimical to my defense and my client's interest.

21 So yeah, it's great that they want to give it to me
22 in a bow and do all of that. That's wonderful. And they can
23 do it, and I'll take it on February 1st. Great. What I'd like
24 to do is, I'd like the opportunity to go to the United States
25 Attorney's Office at some time next week at the Court's

1 direction, whatever you think makes sense, and look at the room
2 for just -- you can see, okay, this stack of documents, for
3 example, these are all bank records for Mr. Gilmore from this
4 account. Great. Okay. Put those to one side.. You know and
5 get through it all.

6 So that's -- that actually enables me to prepare my
7 defense. That's what's in my mind. Not waiting 20 percent of
8 my time so they can send me 36 gigabytes and I can begin wading
9 through it then. That's why that's a problem. And so you know
10 --

11 THE COURT: Okay. Okay. All right. Mr. Marino, I'm
12 not going to set times or even discuss with you what afternoons
13 or mornings you're going to go to the U.S. Attorney's Office.
14 I'm going to set a date. And I agree with you that the
15 Government has had everything all the time. But I will give
16 them two weeks, February 1, I don't consider that unreasonable,
17 as their time for providing discovery to you. That's just two
18 weeks. So we've moved -- we'll move beyond that. Now --

19 MR. MARINO: On the conflicts motion.

20 THE COURT: Yes?

21 MR. MARINO: What I tried to do with the break was
22 obviate the motion practice all together. So just to bring
23 Your Honor quickly up to speed, I told them --

24 THE COURT: But they want to do something in motion
25 practice with regard to conflict.

1 MR. MARINO: I asked them what they wanted.

2 THE COURT: And so -- well, whatever it is --

3 MR. MARINO: Well, because they --

4 THE COURT: I'll see it when it's in writing. And
5 I'm not going to argue with you now --

6 MR. MARINO: They intimated that --

7 THE COURT: -- as to whether they can -- the merits
8 of it.

9 MR. MARINO: They intimated that they may seek my
10 disqualification as Mr. Gilmore's counsel. I told them what --
11 let's -- what is the conflict that needs curing? You could
12 have gone, at the time you signed the waivers and I represented
13 these people when they went to the grand jury, you could easily
14 have made an application at that point if you felt that there
15 was a disqualifiable or unwaivable conflict. They made no such
16 application. I've been representing the man literally for more
17 than a year since then.

18 But I have said to them, if you think it's somehow
19 going to advantage Mr. Gilmore or what have you to have me
20 represent those people, I will today seek to have another
21 lawyer represent them.

22 I'm not -- I'm trying to clear away the underbrush
23 because I think -- maybe I'm wrong about this, but I think and
24 always thought when the case goes to the grand jury and you get
25 that indictment, that's when you, the Government, are ready to

1 go.

2 THE COURT: All right. Just a minute. Mr. Marino,
3 when do you want as a date? Did we nail down the date for this
4 conflicts issue?

5 MR. SKAHILL: February --

6 THE COURT: All --

7 MR. SKAHILL: February 1st, Your Honor.

8 THE COURT: Yes. All right.

9 MR. SKAHILL: And I'd appreciate if we could file the
10 motion, not have Mr. Marino try to litigate now. We've raised
11 this issue with him. He's indicated he thinks it's a waivable
12 conflict. We would like to file the motion, Your Honor. It
13 may be waivable, but we think it needs to go before the Court.
14 It is --

15 THE COURT: You'll be able to file your papers by
16 February 1st?

17 MR. SKAHILL: Absolutely.

18 THE COURT: All right. Fine. Conflicts, February 1.
19 Now what about defense discovery? Do you think you will have
20 anything to provide, Mr. Marino?

21 MR. MARINO: I have provided them with discovery
22 before they went to get the indictment. I gave them all the
23 photographs of Mr. Gilmore's hoard of property. And I gave
24 them Dr. Simring's (phonetic) report. And they're well
25 familiar with Dr. Simring since he testifies for them.

1 THE COURT: All right. So you don't think you have
2 anything --

3 MR. MARINO: Not that I'm aware of.

4 THE COURT: Okay. All right.

5 MR. MARINO: But the moment one -- a piece of
6 discovery becomes available that they're entitled to in the way
7 of reciprocal discovery, I'm very familiar with Rule 16 and
8 with my obligations. And I will comply to a --

9 THE COURT: By what date?

10 MR. MARINO: Well, I don't think there's anything
11 right now, but if Your Honor sets a date of the 8th of
12 February, that's fine.

13 THE COURT: All right. Fine. February 8th for
14 defense discovery under the rule. All right. Now what about
15 motions that you might want to file, Mr. Marino? Give me a
16 date. Pretrial motions that you might want to file.

17 MR. MARINO: I think our pretrial motions can be
18 filed by -- well, I should ask the Court, I don't want to --
19 let me just say, other than motions in limine, I don't believe
20 I have a motion to file, other than motion in limine. And
21 motions in limine, I would expect to be filed in the few days
22 before trial.

23 But in terms of pretrial motions, I'd like to know
24 what Your Honor -- Your Honor's pleasure is because I don't
25 want the pendency of the motions to affect the trial date.

1 THE COURT: It won't affect --

2 MR. MARINO: So I want to do it in a way that's
3 convenient for the Court.

4 THE COURT: I will probably decide them when I hear
5 them.

6 MR. MARINO: Okay. Then if -- given that, Your
7 Honor, then March 1st is fine.

8 THE COURT: All right. March 1st. And --

9 MR. MARINO: With a response on the 8th and a reply
10 on the 15th if that is workable.

11 And I do have one question for the Court back on the
12 conflicts motion when it's convenient for Your Honor to hear.

13 THE COURT: March 1st, defense motions. March 8th,
14 the Government's response. And that's one, two, three weeks
15 before trial. So that should work.

16 MR. SKAHILL: Yes, Your Honor.

17 THE COURT: All right. And then pretrial conference
18 on the 15th.

19 MR. MARINO: I'll reply on that date as well, Your
20 Honor.

21 THE COURT: I don't think a reply as being part of
22 the --

23 MR. MARINO: -- schedule. I understand.

24 THE COURT: So when will the Government provide the
25 jury charge requests?

1 MR. SKAHILL: Would Your Honor -- we'd obviously
2 accommodate whatever Your Honor's preference is in that regard,
3 Judge.

4 THE COURT: Well, a couple of days before trial.

5 MR. SKAHILL: Very good.

6 THE COURT: So maybe the 25th or the 26th?

7 MR. SKAHILL: Yes, Your Honor.

8 THE COURT: And I think that's what both of you
9 should -- so let's say the 26th, both sides provide request to
10 charge.

11 All right. Other mile posts? You can't think of
12 anything else?

13 MR. SKAHILL: Your Honor, we would, I suppose, submit
14 proposed voir dire questions at the same time as the jury
15 charge?

16 THE COURT: Well, yes, either there or the first day
17 of jury selection, right, the 29th.

18 MR. SKAHILL: Okay.

19 THE COURT: I don't need to have that in advance.

20 Now, Mr. Marino, you were elucidating about this
21 conflict issue.

22 MR. MARINO: I was, Your Honor.

23 THE COURT: All right. Let me hear you.

24 MR. MARINO: So in my experience, before a motion is
25 made to the Court, it's -- I know this is part of our local

1 rules here and certainly it's been part of my practice forever,
2 to try to resolve the motion if it can be resolved before
3 putting it to the Court. So I'd like to try to resolve
4 whatever issue they have with respect to conflict. And it
5 would be certainly in Mr. Gilmore's interest, and I believe in
6 the interest of the Court and the Government as well for that
7 issue to be resolved as quickly as possible.

8 Obviously, all the people we're referring to
9 testified in the grand jury to my understanding. And so we
10 have grand jury transcripts. I'm told, I'll get this
11 transcripts. And certainly if I were to represent Mr. Gilmore
12 at trial, which I well intend to do, I would be cross examining
13 these people based upon what statements they have.

14 Other than that, and Mr. Skahill has observed that he
15 certainly doesn't expect me to deviate from the rules of
16 professional conduct. And I wouldn't think this Court would
17 expect that either. So I don't know if they are serious about
18 wanting to try to disqualify me from the case, I would suggest
19 they ought to do that right now because if that's what's going
20 to happen and he's going to have his Speedy Trial rights, he
21 should get another lawyer today, okay?

22 If they're not going to do that and they don't want
23 me represent these people, they think it's unseemly or what
24 have you, if they're going to be witnesses, I'm happy to refer
25 them to another lawyer. Their -- my representation of them

1 consisted in presenting them at Mr. Skahill's behest to testify
2 in the grand jury and debriefing them after that testimony.

3 So I suspect when I receive the grand jury testimony,
4 I will have probably a better account of what occurred than I
5 was able to get in my debriefing interviews right after they
6 came out of the grand jury room. But I'd like to resolve this
7 issue.

8 I'd like obviously to have -- to avoid the motion.
9 And the reason to avoid the motion is really because, honestly,
10 undue work for everybody.

11 THE COURT: I understand. I understand.

12 MR. MARINO: Thank you, Your Honor.

13 THE COURT: Obviously, if lawyers can resolve an
14 issue that is a dispute, a fundamental dispute such as this,
15 without the Court being involved, that's fine. And judges only
16 expect to be consulted when the parties are not able to resolve
17 it themselves.

18 If there's to be a motion to disqualify Mr. Marino,
19 understandably, that should be resolved as quickly as possible.
20 Will you be able to prepare and -- can we stick with the March
21 1st date for that, if it's to be in writing?

22 MR. SKAHILL: February 1st, Your Honor. Yes.

23 THE COURT: I'm sorry.

24 MR. SKAHILL: Yes, February 1st.

25 THE COURT: The February 1st date.

1 MR. SKAHILL: We will adhere to that date, Judge.

2 THE COURT: All right. If it can be resolved before
3 then, fine. If it's to be on paper, then the due date is
4 February 1st, two weeks from today. That's fine.

5 MR. MARINO: Thank you.

6 THE COURT: All right. Anything else that the Court
7 -- bail.

8 MS. SUH: Yes, Your Honor.

9 THE COURT: What's the bail issue?

10 MS. SUH: Consistent with pretrial services'
11 recommendation, the Government's position is that the defendant
12 be released pending trial on an unsecured bond amount of
13 \$250,000 and the standard conditions of pretrial release as set
14 forth in their report.

15 MR. MARINO: We've reviewed the report, Your Honor,
16 and have no objection to those conditions.

17 THE COURT: Very well. So ordered. What about the
18 passport?

19 MR. MARINO: It has already been provided to pretrial
20 services, Your Honor.

21 THE COURT: Very well.

22 MR. MARINO: And Mr. Gilmore has also agreed to an
23 reporting arrangement with pretrial services.

24 THE COURT: Very well. Thank you. Anything else to
25 be taken up in this matter?

1 MS. SUH: Nothing further from the Government, Your
2 Honor.

3 THE COURT: Mr. Marino?

4 MR. MARINO: Not for the defense, Your Honor. Thank
5 you very much for your time this morning. I guess it's late
6 for breakfast.

7 THE COURT: All right.

8 COURTROOM DEPUTY: All rise.

9 * * * * *

10

11 C E R T I F I C A T I O N

12 I, VIDHYA VEERAPPAN, court approved transcriber,
13 certify that the foregoing is a correct transcript from the
14 official electronic sound recording of the proceedings in the
15 above-entitled matter, and to the best of my ability.

16

17

18 /s/ Vidhya Veerappan .

19 VIDHYA VEERAPPAN

20 J&J COURT TRANSCRIBERS, INC. DATE: January 23, 2019

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